

SUBCHAPTER VIII. JUDGMENT.

Article 23.

Judgment.

§ 1-208. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-208.1. Judgment docket, judgment and docket book defined.

As used in this Chapter, unless the context clearly requires otherwise, the phrases "judgment docket", "judgment book", "docket book", and "judgment and docket book" include, without limitation, all records created or maintained by the clerk of superior court, pursuant to rules prescribed by the Director of the Administrative Office of the Courts pursuant to G.S. 7A-109, by the use of an electronic data entry system established by the Director pursuant to G.S. 7A-343. (1991, c. 167, s. 1.)

§ 1-209. Judgments authorized to be entered by clerk; sale of property; continuance pending sale; writs of assistance and possession.

The clerks of the superior courts are authorized to enter the following judgments:

- (1) All judgments of voluntary nonsuit.
- (2) All consent judgments.
- (3) In all actions upon notes, bills, bonds, stated accounts, balances struck, and other evidences of indebtedness within the jurisdiction of the superior court.
- (4) All judgments by default final and default and inquiry as are authorized by Rule 55 of the Rules of Civil Procedure, and in this section provided.
- (5) In all cases where the clerks of the superior court enter judgment by default final upon any debt secured by mortgage, deed of trust, conditional sale contract or other conveyance of any kind, either real or personal property, or by a pledge of property, the said clerks of the superior court are authorized and empowered to order a foreclosure of such mortgage, deed of trust, conditional sale contract, or other conveyance, and order a sale of the property so conveyed or pledged upon such terms as appear to be just; and the said clerks of the superior court shall have all the power and authority now exercised by the judges of the superior court to appoint commissioners to make such sales, to receive the reports thereof, and to confirm the report of sale or to order a resale, and to that end they are authorized to continue such causes from time to time as may be required to complete the sale, and in the final judgment in said causes they shall order the execution and delivery of all necessary deeds and make all necessary orders disbursing the funds arising from the sale, and may issue writs of assistance and possession upon ten days' notice to parties in possession. The commissioners appointed to make foreclosure sales, as herein authorized, may proceed to advertise such sales immediately after the date of entering judgment and order of foreclosure, unless otherwise provided in said judgment and order.
- (6) All judgments on awards, or on Certificates of Accrued Arrearages, of the Industrial Commission in workers' compensation cases, as defined and provided for in G.S. 97-87.

In any tax foreclosure action pending on March 15, 1939 or thereafter brought under the provisions of G.S. 105-414 in which there is filed no answer which seeks to prevent entry of

judgment of sale, the clerk of the superior court may render judgment of sale and make all necessary subsequent orders and judgments to the same extent as permitted by this section in actions brought to foreclose a mortgage. All such judgments and orders heretofore rendered or made by a clerk of the superior court in such tax foreclosure actions are hereby, as to the authority of the said clerk, ratified and confirmed. (1919, c. 156; C.S., s. 593; Ex. Sess., 1921, c. 92, s. 12; 1929, cc. 35, 49; 1939, c. 107; 1943, c. 301, s. 1; 1967, c. 954, s. 3; 2001-477, s. 2.)

§ 1-209.1. Petitioner who abandons condemnation proceeding taxed with fee for respondent's attorney.

In all condemnation proceedings authorized by G.S. 40A-3 or by any other statute, the clerks of the superior courts are authorized to fix and tax the petitioner with a reasonable fee for respondent's attorney in cases in which the petitioner takes or submits to a voluntary nonsuit or otherwise abandons the proceeding. (1957, c. 400, s. 1; 2001-487, s. 38(a).)

§ 1-209.2. Voluntary nonsuit by petitioner in condemnation proceeding.

The petitioner in all condemnation proceedings authorized by G.S. 40A-3 or by any other statute is authorized and allowed to take a voluntary nonsuit. (1957, c. 400, s. 2; 2001-487, s. 38(b).)

§ 1-210. Return of execution; order for disbursement of proceeds.

In all executions issued by the clerk of the superior court upon judgment before the clerk of the superior court, under G.S. 1-209, and execution issued thereon, the sheriff shall make his return to the clerk of the superior court, who shall make the final order directing the sheriff to disburse the proceeds received by him under said execution: Provided, that any interested party may appeal to the superior court, where the matter shall be heard de novo. (1925, c. 222, s. 1.)

§§ 1-211 through 1-215. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-215.1. Judgments or orders not rendered on Mondays validated.

In any case where, prior to the ratification of this section, any judgment or order, required to be rendered or signed on Monday, has been rendered or signed by any clerk of the superior court on any day other than Monday, such judgment or order is hereby declared to be valid and of the same force and effect as if the day on which it was signed or rendered had been a Monday; and any conveyance executed by any commissioner or other person authorized to make a conveyance in any action or special proceeding where the appointment of the commissioner or other person, the order of sale, the order of resale, or the confirmation of sale was made on a day other than Monday, is hereby declared to be valid and to have the same force and effect as if the day on which such judgment or order was rendered had been a Monday. (1943, c. 301, s. 4.)

§ 1-215.2. Time within which judgments or orders signed on days other than Mondays may be attacked.

From and after the 30th day of September, 1951, no action shall be brought or no motion in the cause shall be made to attack any judgment or order of any clerk of the superior court by reason of such judgment or order having been signed by such clerk of the superior court on any day other than Monday. (1951, c. 895, s. 1.)

§ 1-215.3. Validation of conveyances pursuant to orders made on days other than Mondays.

From and after the 30th day of September, 1951, any conveyance executed by any commissioner or other person authorized to make a conveyance in any action or special proceeding where the appointment of the commissioner or other person, the order of sale, the order of resale, or the order or confirmation of sale was made on a day other than Monday is hereby declared to be valid and to have the same force and effect as if the day on which such judgment or order was rendered had been a Monday. (1951, c. 895, s. 2.)

§ 1-216. Repealed by Session Laws 1943, c. 301, s. 3.

§ 1-217. Certain default judgments validated.

In every case where, prior to the first day of January, one thousand nine hundred and twenty-seven, a judgment by default final has been entered by the clerk of the superior court of any county in this State on a day other than Monday, contrary to G.S. 1-215 and 1-216, such judgment shall be deemed to have been entered as of the first Monday immediately following the default and is hereby to all intents and purposes validated; provided, however, nothing in this section shall be construed to affect the rights of any interested party, as provided in G.S. 1-220 other than for irregularity as to date of entry of the judgment by the clerk of the court. (1927, c. 187.)

§ 1-217.1. Judgments based on summons erroneously designated alias or pluries validated.

In all civil actions and special proceedings where the defendants were served with summons and judgment thereafter entered, or any final decree made, and said judgments or decrees shall not be invalidated by reason of the fact that the summons, although designated an alias or pluries summons, was not actually such: Provided, that this section shall not apply where the first summons was issued more than five years preceding March 6, 1943. (1943, c. 532.)

§ 1-217.2. Judgments by default to remove cloud from title to real estate validated.

In every case where prior to the tenth day of October, 1969, a judgment by default final has been entered by the clerk of superior court of any county in this State in an action to remove cloud from title to real estate, the said judgment is hereby to all intents and purposes validated, and said judgment is hereby declared to be regular, proper and a lawful judgment in all respects according to the provisions of same. (1961, c. 628; 1971, c. 59; 1973, c. 1348, s. 1.)

§§ 1-218 through 1-222. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-223. Against married persons.

In an action brought by or against a married person, judgment may be given against such married person for costs or damages or both, to be levied and collected solely out of such married person's separate estate or property. (Rev., s. 563; C.S., s. 603; 1977, c. 545.)

§§ 1-224 through 1-227. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-228. Regarded as a deed and registered.

Every judgment, in which the transfer of title is so declared, shall be regarded as a deed of conveyance, executed in due form and by capable persons, notwithstanding the want of capacity

in any person ordered to convey, and shall be registered in the proper county, under the rules and regulations prescribed for conveyances of similar property executed by the party. The party desiring registration of such judgment must produce to the register a copy thereof, certified by the clerk of the court in which it is enrolled, under the seal of the court, and the register shall record both the judgment and certificate. All laws which are passed for extending the time for registration of deeds include such judgments, provided the conveyance, if actually executed, would be so included. (1850, c. 107, ss. 2, 4; R.C., c. 32, ss. 25, 27; 1874-5, c. 17, ss. 2, 4; Code, ss. 427, 429; Rev., ss. 567, 568; C.S., s. 608.)

§ 1-229. Certified registered copy evidence.

In all legal proceedings, touching the right of parties derived under such judgment, a certified copy from the register's books is evidence of its existence and of the matters therein contained, as fully as if proved by a perfect transcript of the whole case. (1850, c. 107, s. 3; R.C., c. 32, s. 26; 1874-5, c. 17, s. 3; Code, s. 428; Rev., s. 569; C.S., s. 609.)

§ 1-230. In action for recovery of personal property.

In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or for the recovery of possession, or for the value thereof in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or for the value thereof in case a return cannot be had, and damages for taking and withholding the same. (C.C.P., s. 251; Code, s. 431; Rev., s. 570; C.S., s. 610.)

§ 1-231. What judge approves judgments.

In all cases where a judgment, decree or order of the superior court is required to be approved by a judge, it shall be approved by the judge having jurisdiction of receivers and injunctions. (1876-7, c. 223, s. 3; 1879, c. 63; 1881, c. 51; Code, s. 432; Rev., s. 571; C.S., s. 611.)

§ 1-232. Judgment roll.

Unless the party or his attorney furnishes a judgment roll or the documents referred to in this section are already on file, the clerk, immediately after entering the judgment, shall attach together and file the following papers which constitute the judgment roll:

- (1) In case the complaint is not answered by any defendant, the summons and complaint, or copies thereof, proof of service, and that no answer has been received, the report, if any, and a copy of the judgment.
- (2) In all other cases, the summons, pleadings, or copies thereof, and a copy of the judgment, with any verdict or report, the offer of the defendant, exceptions, case, and all orders and papers in any way involving the merits and necessarily affecting the judgment. (C.C.P., s. 253; Code, s. 434; Rev., s. 572; C.S., s. 612; 2003-59, s. 1.)

§ 1-233. Docketed and indexed.

Every judgment of the superior or district court, affecting title to real property, or requiring in whole or in part the payment of money, shall be indexed and recorded by the clerk of said superior court on the judgment docket of the court. The docket entry must contain the file number for the case in which the judgment was entered, the names of the parties, the address, if known, of each

party and against whom judgment is rendered, the relief granted, the date, hour, and minute of the entry of judgment under G.S. 1A-1, Rule 58, and the date, hour, and minute of the indexing of the judgment. The clerk shall keep a cross-index of the whole, with the dates and file numbers thereof; however, error or omission in the entry of the address or addresses shall in no way affect the validity, finality or priority of the judgment docketed. (Sup. Ct. Rule VIII; C.C.P., s. 252; Code, s. 433; Rev., s. 573; 1909, c. 709; C.S., s. 613; 1929, c. 183; 1943, c. 301, s. 41/2; 1971, c. 268, s. 6; 1981, c. 745, s. 1; 2003-59, s. 2.)

§ 1-234. Where and how docketed; lien.

Upon the entry of a judgment under G.S. 1A-1, Rule 58, affecting the title of real property, or directing in whole or in part the payment of money, the clerk of superior court shall index and record the judgment on the judgment docket of the court of the county where the judgment was entered. The judgment may be docketed on the judgment docket of the court of any other county upon the filing with the clerk thereof of a transcript of the original docket. The judgment lien is effective as against third parties from and after the indexing of the judgment as provided in G.S. 1-233. The judgment is a lien on the real property in the county where the same is docketed of every person against whom any such judgment is rendered, and which he has at the time of the docketing thereof in the county in which such real property is situated, or which he acquires at any time thereafter, for 10 years from the date of the entry of the judgment under G.S. 1A-1, Rule 58, in the county where the judgment was originally entered. But the time during which the party recovering or owning such judgment shall be, or shall have been, restrained from proceeding thereon by an order of injunction, or other order, or by the operation of any appeal, or by a statutory prohibition, does not constitute any part of the 10 years aforesaid, as against the defendant in such judgment, or the party obtaining such orders or making such appeal, or any other person who is not a purchaser, creditor or mortgagee in good faith.

A judgment docketed pursuant to G.S. 15A-1340.38 shall constitute a lien against the property of a defendant as provided for under this section. (C.C.P., s. 254; Code, s. 435; Rev., s. 574; C.S., s. 614; 1971, c. 268, s. 7; 1998-212, s. 19.4(i); 2003-59, s. 3.)

§ 1-235. Of appellate division docketed in superior court; lien.

It is the duty of the appropriate clerk of the appellate division, on application of the party obtaining judgment in one of the courts of that division, directing in whole or in part the payment of money, or affecting the title to real estate, or on the like application of the attorney of record of said party, to certify under his hand and the seal of said court a transcript of the judgment, setting forth the title of the court, the names of the parties thereto, the relief granted, that the judgment was so rendered by said court, the amount and date of the judgment, what part thereof bears interest and from what time; and said clerk shall send such certificate and transcript to the clerk of the superior court of such counties as he is directed; and the clerk of the superior court receiving the certificate and transcript shall docket them in like manner as judgment rolls of the superior court are docketed. And when so docketed, the lien of said judgment is the same in all respects, subject to the same restrictions and qualifications, and the time shall be reckoned as is provided and prescribed in the preceding sections for judgments of the superior court, so far as the same are applicable. The party desiring the certificate and transcript provided for in this section may obtain them at any time after such judgment has been rendered, unless the appellate court otherwise directs. (1881, c. 75, ss. 1, 4; Code, s. 436; Rev., s. 575; C.S., s. 615; 1969, c. 44, s. 2.)

§ 1-236. Repealed by Session Laws 1971, c. 268, s. 34.

§ 1-236.1. Transcripts of judgments certified by deputy clerks validated.

Each transcript of judgment from the original docket of the superior or district court of a county where the same was rendered and docketed, heretofore certified under the official seal of said court, by a deputy clerk thereof, in his own name as such deputy clerk, and docketed on the judgment docket of another county in the State, is hereby validated and declared of full force and effect in such county where docketed, from the date of docketing of the same, to the same extent and with the same effect as if said transcript of judgment had been certified in the name of the clerk of the superior court of said original county, and under his hand and official seal. (1943, c. 11; 1971, c. 268, s. 8.)

§ 1-237. Judgments of federal courts docketed; lien on property; recordation; conformity with federal law.

Judgments and decrees rendered in the district courts of the United States within this State may be docketed on the judgment dockets of the superior courts in the several counties of this State for the purpose of creating liens upon property in the county where docketed; and when a judgment or decree is registered, recorded, docketed and indexed in a county in like manner as is required of judgments and decrees of the courts of this State, it shall become a lien and shall have all the rights, force and effect of a judgment or decree of the superior court of said county. When a judgment roll of a district court is filed with the clerk of the superior court, the clerk shall docket it as judgments of the superior court are required to be docketed. It is the intent and purpose of this section to conform the State law to the requirements of the act of Congress entitled "An Act to Regulate the Liens on Judgments and Decrees of the Courts of the United States" being the act of August first, one thousand eight hundred and eighty-eight, Chapter seven hundred and twenty-nine. (1889, c. 439; Rev., s. 576; C.S., s. 616; 1943, c. 543.)

§ 1-238. Repealed by Session Laws 1943, c. 543.

§ 1-239. Paid to clerk; docket credited; transcript to other counties; notice to attorney for judgment creditor; judgment creditor to give notice of payment; entry of payment on docket; penalty for failure to give notice of payment.

- (a) Payment of money judgment to clerk's office.
 - (1) The party against whom a judgment for the payment of money is rendered by any court of record may pay the whole, or any part thereof, in cash or by check, to the clerk of the court in which the same was rendered, although no execution has issued on such judgment.
 - (2) The clerk shall give the party a receipt showing the date and amount of the payment and identifying the judgment, and shall note receipt of the payment on the judgment docket of the court. If the payment is made by check and the check is not finally paid by the drawee bank, the clerk shall cancel the notation of receipt and return the check to the party who tendered it.
 - (3) When a payment to the clerk is made in cash or when a check is finally paid by the drawee bank, the clerk shall give the notice provided for in subsection (b). When the full amount of a judgment has been so paid, the clerk shall include the words "JUDGMENT PAID IN FULL" in the notice.

- (4) When a judgment has been paid in part, but not in full, the clerk shall furnish a certificate of partial payment to the clerk of superior court of any county to which a transcript of a judgment has been sent, but only upon the request of that clerk or of the party who made the partial payment.
- (5) When a judgment has been paid in full, and the party in whose favor the judgment was rendered has collected all payments made to the clerk, or when ten days have passed since notice of payment in full was sent pursuant to subsection (b) and the party has neither collected all payments made to the clerk nor notified the clerk that the party disputes payment of the full amount of the judgment, then the clerk shall immediately:
 - a. Mark "PAID AND SATISFIED IN FULL" on the judgment docket, and
 - b. Forward a certificate of payment in full to the clerk of superior court in each county to which a transcript of the judgment has been sent.
- (6) If the party in whose favor a judgment has been rendered notifies the clerk that the party disputes payment in full of the judgment, the clerk shall proceed as provided in G.S. 1-242.
- (7) Entries of payment or satisfaction on the judgment dockets in the office of the clerk of the superior court by any person other than the clerk shall be made in the presence of the clerk or his deputy, who shall witness the same.

(b) Upon receipt of any payment of money upon a judgment, the clerk of superior court shall within seven days after the receipt of such payment give notice thereof to the attorney of record for the party in whose favor the judgment was rendered, or if there is no attorney of record to the party. Any other official of any court who receives payment of money upon a judgment shall give notice in the same manner; provided, further, that no such moneys shall be paid by the clerk of the superior court until at least seven days after written notice by mail or in person has been given to the attorney of record in whose favor the judgment was rendered; provided further, that the attorney of record may waive said notice, and said moneys shall be paid by the clerk of superior court, by signing the judgment docket.

(c) Upon receipt by the judgment creditor of any payment of money upon a judgment, the judgment creditor shall within 60 days after receipt of the payment give satisfactory notice thereof to the clerk of the superior court in which the judgment was rendered, and the clerk shall thereafter promptly enter the payment on the judgment docket of the court, and the clerk shall immediately forward a certificate thereof to the clerk of the superior court of each county to whom a transcript of the judgment has been sent, and the clerk of each superior court shall thereafter promptly enter the same on the judgment docket of the court and file the original with the judgment roll in the action. If the judgment creditor fails to file the notice required by this subsection within 30 days following written demand by the debtor, he may be required to pay a civil penalty of one hundred dollars (\$100.00) in addition to attorneys' fees and any loss caused to the debtor by such failure. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1823, c. 1212, P.R.; R.C., c. 31, s. 127; Code, s. 438; Rev., s. 577; 1911, c. 76; C.S., s. 617; 1967, c. 1067; 1969, c. 18; 1981, c. 745, s. 2; 1987, c. 497; 1997-456, s.27; 1998-215, s. 94.)

§ 1-239.1. Records of cancellation, assignment, etc., of judgments recorded by photographic process.

In all cases where the governing authority of any county has caused the instruments or documents filed for record in the office of the clerk of the superior court of such county to be recorded by any system involving the use of microfilm or by the use of any microphotographic system or by any system of photographic recording, it shall be lawful for the clerk of the superior court to keep a record or docket book for the purpose of entering on same payment or payments, credit or satisfaction, assignments or releases in whole or in part of any judgment which has heretofore been recorded by any photographic process above mentioned. For this purpose, the form of such docket or record book shall be substantially as follows:

"_____ Superior Court Cancellation, Assignment, Transfer or Release of Judgments, etc.

I (We) _____ do hereby certify that that certain judgment docketed in Judgment Docket_____, at page_____, filed _____ day of____, ____, Case No._____, wherein _____ is (are) Plaintiff(s) and _____ is (are) Defendant(s) has been fully satisfied, released and discharged together with all costs, and interest, _____

Signed in the presence of

Assistant-Deputy Clerk of
the Superior Court of
_____County"

Any entries of payment, credits or satisfaction made on such record or docket book, in substantially the form above mentioned, shall be good and valid payments, credits or satisfactions in all respects as if the same had been duly entered on the original judgment docket before the recording of same by the photographic process or system above mentioned. The clerk of the superior court shall have the authority to forward certificates to the clerk of the superior court of each county to whom a transcript of said judgment has been sent to the same extent and for all the purposes provided in G.S. 1-239, and all payments, credits or satisfactions entered in said docket book or record shall be valid to the same extent as if the same had been entered in the regular judgment docket in accordance with the provisions of G.S. 1-239. (1951, c. 774; 1999-456, s. 59.)

§ 1-240. Repealed by Session Laws 1967, c. 847, s. 2.

§ 1-241. Clerk to pay money to party entitled.

The clerk, to whom money is paid as aforesaid, shall pay it to the party entitled to receive it, under the same rules and penalties as if the money had been paid into his office by virtue of an execution. (1823, c. 1212, s. 2, P.R.; R.C., c. 31, s. 128; Code, s. 439; Rev., s. 578; C.S., s. 619.)

§ 1-242. Credits upon judgments.

If payment is made on a judgment docketed in the office of the clerk of the superior court and no entry is made on the judgment docket, or if a docketed judgment is reversed or modified on appeal and no entry is made on the judgment docket, any interested person may move in the cause before the clerk, upon affidavit after notice to all interested persons, to have the credit, reversal, or modification entered. A hearing on the motion before the clerk may be on affidavit, oral testimony, deposition, and any other competent evidence. The clerk shall render judgment, from which any party may appeal in the same manner as

in appeals in civil actions, in accordance with G.S. 1-301.1. On appeal, any party may demand a jury trial of any issue of fact. If a final judgment orders the credit, reversal, or modification, a transcript of the final judgment shall be sent by the clerk of the superior court to each county in which the original judgment is docketed, and the clerk of each county shall enter the transcript on the judgment docket of that county opposite the original judgment and file the transcript. No final process may issue on the original judgment after affidavit filed in the cause until there is a final disposition of the motion for credit, reversal, or modification. (1903, c. 558; Rev., s. 579; C.S., s. 620; 1999-216, s. 3; 2010-96, s. 23.)

§ 1-243. For money due on judicial sale.

The Supreme and other courts ordering a judicial sale, or having possession of bonds taken on such sale, may, on motion, after ten days' notice thereof in writing, enter judgment as soon as the money becomes due against the debtors or any of them, unless for good cause shown the court directs some other mode of collection. (R.C., c. 31, s. 129; Code, s. 941; Rev., s. 1524; C.S., s. 621.)

§ 1-244. Repealed by Session Laws 1971, c. 268, s. 34.

§ 1-245. Cancellation of judgments discharged through bankruptcy proceedings.

When a referee in bankruptcy furnishes the clerk of the superior court of any county in this State a written statement or certificate to the effect that a bankrupt has been discharged, indicating in said certificate that the plaintiff or judgment creditor in whose favor judgments against the defendant bankrupt are docketed in the office of the clerk of the superior court have received due notice as provided by law from the said referee, and that said judgments have been discharged, it shall be the duty of the clerk of the superior court to file said certificate and enter a notation thereof on the margin of said judgments.

This section shall apply to judgments of this kind already docketed as well as to future judgments of the same kind. (1937, c. 234, ss. 1-4; 1971, c. 268, s. 8.1.)

§ 1-246. Assignment of judgment to be entered on judgment docket, signed and witnessed.

No assignment of judgment shall be valid at law to pass any property as against creditors or purchasers for a valuable consideration from the donor, bargainor, or assignor, but from the entry of such assignment on the margin of the judgment docket opposite the said judgment, signed by the owner of said judgment, or his attorney under power of attorney or his attorney of record, and witnessed by the clerk or the deputy clerk of the superior court of the county in which said judgment is docketed: Provided, that when an assignment of judgment is duly executed by the owner or owners of the judgment and recorded in the office of the clerk of the superior court of the county in which the judgment is docketed and a specific reference thereto is made on the margin of the judgment docket opposite the judgment to be assigned, it shall operate as a complete and valid transfer and assignment of the judgment. (1941, c. 61; 1945, c. 154.)